

Message Text

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TO AMEMBASSY CANBERRA IMMEDIATE

INFO SECSTATE WASHDC IMMEDIATE 8352

S E C R E T SECTION 1 OF 3 MANILA 11494

FOR DEPSEC ROBINSON

E.O. 11652: GDS

TAGS: OVIP (ROBINSON, C.W.)

SUBJECT: VISIT OF DEPSEC ROBINSON: BRIEFING PAPER - US OBLI-
GATIONS UNDER US-RP MUTUAL DEFENSE TREATY

1. ON JULY 29 THE PHILIPPINE REPRESENTATIVE TO THE MUTUAL
DEFENSE BOARD MEETING TABLED A PAPER WHICH CONCLUDED WITH THE
FOLLOWING PARAGRAPH:

"F. I WOULD LIKE TO KNOW WHETHER IT IS THE OFFICIAL
POSITION OF THE UNITED STATES GOVERNMENT THAT IT WILL NOT
DEFEND THE PHILIPPINES AGAINST EXTERNAL ARMED ATTACK UNLESS
THE ATTACK DIRECTLY AFFECTS THE BASES OCCUPIED BY U.S.
FORCES AS MENTIONED IN THE SYMINGTON REPORT AND IMPLIED
BY THE SULLIVAN POLICY STATEMENT. IF THIS IS SO, I WILL
HAVE TO REQUEST A MEETING OF THE PHILIPPINE NATIONAL SECURITY
COUNCIL AND REPORT TO THE BODY THAT IN EFFECT THE RP-US
MUTUAL DEFENSE TREATY IS OF NOT VALUE TO THE PHILIPPINES."

2. ON JULY 30 THE UNDER SECRETARY OF DEFENSE, CARMELO
BARBERO, TOLD A NEWS CONFERENCE THAT "THE UNITED STATES
WILL NOT COME TO THE DEFENSE OF THE PHILIPPINE UNLESS
US MILITARY BASES HERE ARE ATTACKED." HE WENT ON TO
ASK, "I WONDER IF THE AMERICANS WOULD PROTECT THE REED
BANK IF IT WERE ATTACKED BY CHINA OR VIETNAM WHO CLAIM
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THEY HAVE AS MUCH RIGHT TO IT AS WE HAVE?"

3. THESE TWO STATEMENTS REPRESENT QUESTIONS WHICH OFFICIAL FILIPINOS ARE ASKING IN AN EFFORT TO TEST OUR SENSE OF OBLIGATION UNDER THE 1951 MUTUAL DEFENSE TREATY. THEY ASSERT THAT OUR DEFENSE RELATIONSHIP WITH THE PHILIPPINES IS QUALITATIVELY DIFFERENT FROM OUR NATO OBLIGATIONS, BECAUSE IN NATO OUR MILITARY RESPONSE TO AN ENEMY ATTACK WOULD BE "AUTOMATIC."

4. THE ASSUMPTION WITH RESPECT TO NATO IS BASED UPON THEIR READING OF ARTICLE 5 OF THE NORTH ATLANTIC TREATY, WHICH READS AS FOLLOWS:

"THE PARTIES AGREE THAT AN ARMED ATTACK AGAINST ONE OR MORE OF THEM IN EUROPE OR NORTH AMERICA SHALL BE CONSIDERED AN ATTACK AGAINST THEM ALL; AND CONSEQUENTLY THEY AGREE THAT, IF SUCH AN ARMED ATTACK OCCURS, EACH OF THEM, IN EXERCISE OF THE RIGHT OF INDIVIDUAL OR COLLECTIVE SELF-DEFENSE RECOGNIZED BY ARTICLE 51 OF THE CHARTER OF THE UNITED NATIONS, WILL ASSIST THE PARTY OR PARTIES SO ATTACKED BY TAKING FORTHWITH, INDIVIDUALLY AND IN CONCERY WITH THE OTHER PARTIES, SUCH ACTION AS IT DEEMS NECESSARY, INCLUDING THE USE OF ARMED FORCE, TO RESTORE AND MAINTAIN THE SECURITY OF THE NORTH ATLANTIC AREA.

ANY SUCH ARMED ATTACK AND ALL MEASURES TAKEN AS A RESULT THEREOF SHALL IMMEDIATELY BE REPORTED TO THE SECURITY COUNCIL. SUCH MEASURES SHALL BE TERMINATED WHEN THE SECURITY COUNCIL HAS TAKEN THE MEASURES NECESSARY TO RESTORY AND MAINTAIN INTERNATIONAL PEACE AND SECURITY."

5. THEIR ASSUMPTION ABOUT THE AUTOMATICITY OF THE NATO OBLIGATION IS ERRONEOUS. THIS CAN BE DEMONSTRATED BY PROVIDING THEM A QUOTATION FROM SECRETARY OF STATE ACHESON, MADE WHILE TESTIFYING BEFORE THE UNIED STATES SENATE ON THE RATIFICATION OF THE NORTH ATLANTIC TREATY. IN THAT TESTIMONY SECRETARY ACHESON SAID:

"...IN THE VENT OF SUCH AN ATTACK, EACH OF THEM WILL TAKE, INDIVIDUALLY AND IN CONCERT WITH THE OTHER PARTIES, WHATEVER ACTION IT DEEMS NECESSARY TO RESTORE AND MAINTAIN THE SECURITY OF THE NORTH ATLANTIC AREA, INCLUDING THE USE OF ARMED FORCE.

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"THIS DOES NOT MEAN THAT THE UNITED STATES WOULD BE AUTOMATICALLY AT WAR IF ONE OF THE NATIONS COVERED BY THE PACT IS SUBJECTED TO ARMED ATTACK. UNDER OUR CONSTITUION, THE CONGRESS ALONE HAS THE POWER TO DECLARE WAR. WE WOULD BE BOUND TO TAKE PROMPTLY THE ACTION WHICH WE DEEMED NECESSARY TO RESTORE AND MAINTAIN THE SECURITY OF THE NORTH ATLANTIC AREA. THAT DECISION WOULD BE TAKEN IN ACCORDANCE WITH OUR CONSTITUIONAL PROCEDURES. THE

FACTORS WHICH WOULD HAVE TO BE CONSIDERED WOULD BE, ON

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THE ONE SIDE, THE GRAVITY OF THE ARMED ATTACK, ON THE OTHER, THE ACTION WHICH WE BELIEVE NECESSARY TO RESTORE AND MAINTAIN THE SECURITY OF THE NORTH ATLANTIC AREA. THAT IS THE END TO BE ACHIEVED. WE ARE BOUND TO DO WHAT IN OUR HONEST JUDGEMENT IS NECESSARY TO REACH THAT RESULT. IF WE SHOULD BE CONFRONTED AGAIN WITH A CALCULATED ARMED ATTACK SUCH AS WE HAVE TWICE SEEN IN THE TWENTITH CENTURY, I SHOULD NOT SUPPOSE THAT WE WOULD DECIDE ANY ACTION OTHER THAN THE USE OF ARMED FORCE EFFECTIVE EITHER AS AN EXERCISE OF THE RIGHT OF COLLECTIVE SELF-DEFENSE OR AS NECESSARY TO RESTORE THE PEACE AND SECURITY OF THE NORTH ATLANTIC AREA. THAT DECISION WILL REST WHERE THE CONSTITUTION HAS PLACED IT."

6. EVEN IF THE FILIPINOS ACCEPT THAT UNITED STATES MILITARY ACTION UNDER NATO WOULD REQUIRE THE APPLICATION OF UNITED STATES CONSTITUTIONAL PROCESSES, THEY BELIEVE THAT THE DISPOSITION OF OUR FORCES IN WESTERN EUROPE IS SUCH THAT OUR TROOPS WOULD BE IMMEDIATELY ENGAGED DEFENSIVELY IN THE EVENT OF AN ENEMY ATTACK BECAUSE THE ATTACK WOULD HAVE TO PROCEED THROUGH US HELD POSITIONS. TO SOME EXTENT THIS IS TRUE, BUT OF COURSE IT APPLIES ONLY TO DISPOSITIONS IN SOUTHERN GERMANY AND DOES NOT TAKE INTO ACCOUNT THE POSSIBILITIES OF ATTACKS IN GREECE, TURKEY OR NORWAY, WHERE WE DO NOT HAVE SIGNIFICANT FORCES DISPOSED IN DEFENSIVE POSITIONS.

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7. THE ASSUMPTION THAT THE UNITED STATES WOULD DEFEND THE PHILIPPINES ONLY IF US MILITARY BASES WERE ATTACKED IS LIKEWISE PREMISED ON AN ERROR. THIS ERRONEOUS CONCLUSION IS DRAWN FROM TESTIMONY PRESENTED BY MEMBERS OF THE UNITED STATES EXECUTIVE BRANCH TESTIFYING BEFORE SENATE SUBCOMMITTEES STUDYING WAR POWER LEGISLATION AND ATTEMPTING TO DEFEND THE SOLE RIGHT OF THE CONGRESS TO DECLARE WAR. IN THAT TESTIMONY, THESE OFFICIALS STATED THAT THE ONLY OCCASION WHEN UNITED STATES FORCES IN THE PHILIPPINES WOULD BE COMMITTED TO COMBAT IN THE ABSENCE OF A DECLARATION OF WAR WOULD BE IF US MILITARY BASES ARE ATTACKED. OTHERWISE, THESE WITNESSES STATED, THE UNITED STATES WOULD HAVE TO FOLLOW ITS NORMAL CONSTITUTIONAL PRACTICES IN DECIDING HOW TO REACT TO AN ATTACK UPON THE PHILIPPINES.

8. OBVIOUSLY THERE ARE DIFFERENT TYPES OF ATTACKS WHICH MIGHT CALL FOR DIFFERENT TYPES OF REACTION. A MASSIVE, UNAMBIGUOUS, AGGRESSIVE ATTACK BY AN ENEMY UPON THE METROPOLITAN TERRITORY OF THE PHILIPPINES WOULD UNDOUBTEDLY BOLIGAT US MORALLY TO DECLARE WAR AGAINST THE AGRESSOR AND TO COME TO THE IMMEDIATE ASSISTANCE OF THE PHILIPPINES. IN ANY SUCH UNAMBIGUOUS SITUATION, THE US MILITARY BASES WOULD PROBABLY BE THE FIRST TARGET HIT BY THE ENEMY AND THEREFORE THE QUESTION WOULD BECOME LARGELY ACADEMIC. PRESIDENT EISENHOWER SAID AS MUCH IN 1958 WHEN HE VISITED THE PHILIPPINES. THE COMMUNIQUE ISSUED AT THAT TIME QUOTES THE PRESIDENT AS FOLLOWS:

"PRESIDENT EISENHOWER MADE CLEAR THAT, IN ACCORDANCE WITH THESE EXISTING ALLIANCES AND THE DEPLOYMENTS AND DISPOSITIONS THEREUNDER, ANY ARMED ATTACK AGAINST THE PHILIPPINES WOULD INVOLVE AN ATTACK AGAINST UNITED STATES FORCES STATIONED THERE AND AGAINST THE UNITED STATES AND WOULD BE INSTANTLY REPELLED."

9. UNDER THE WAR POWERS ACT THE PRESIDENTIAL EXECUTIVE POWER IS DEFINED AS FOLLOWS:

"(C) PRESIDENTIAL EXECUTIVE POWER AS COMMANDER-IN-CHIEF; LIMITATION.

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THE CONSTITUTIONAL POWERS OF THE PRESIDENT AS
COMMANDER-IN-CHIEF TO INTRODUCE UNITED STATES ARMED
FORCES INTO HOSTILITIES, OR INTO SITUATIONS WHERE IMMINENT
INVOLVEMENT IN HOSTILITIES IS CLEARLY INDICATED BY THE
CIRCUMSTANCES, ARE EXERCISED ONLY PURSUANT TO (1) A
DECLARATION OF WAR, (2) SPECIFIC STATUTORY AUTHORIZATION,
OR (3) A NATIONAL EMERGENCY CREATED BY ATTACK UPON THE
UNITED STATES, ITS TERRITORIES OR POSSESSIONS, OR ITS
ARMED FORCES. (PUB. L. 93-148, 2, NOV. 7, 1973,
87 STAT. 555.)"

10. IT IS CLEAR FROM THAT WORDING THAT OUR FORCES COULD
BE COMMITTED IN DEFENSE OF THE PHILIPPINES IF THEY ARE
ATTACKED. OTHERWISE THEY COULD BE COMMITTED ONLY

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FOR DEPSEC ROBINSON

SUBSEQUENT TO A DECLARATION OF WAR OR SPECIFIC STATUTORY
AUTHORIZATION.

11. AUTHORITATIVE FILIPINOS, INCLUDING THE PRESIDENT,
PROBABLY UNDERSTAND THESE FACTS FULLY WELL BUT THEY PERMIT
THEIR SUBORDINATES TO MAKE STATEMENTS SUCH AS THOSE QUOTED
AT THE BEGINNING OF THIS PAPER IN ORDER TO CREATE THE
PUBLIC IMPRESSION THAT THE UNITED STATES OBLIGATION TO
DEFEND THE PHILIPPINES IS SOMETHING LESS THAN UNEQUIVOCAL.
THEIR REASONS FOR THIS HAVE PARTLY TO DO WITH THEIR

NEGOTIATING TACTICS ON THE MILITARY BASES AND PARTLY TO DO WITH THEIR CONTINUING SUGGESTION THAT THEY MIGHT LIKE TO BREAK OUR TREATY RELATIONSHIP AND JOIN THE NON-ALIGNED WORLD. THIS LATTER SUGGESTION IS PRETTY MUCH AN EMPTY BLUFF AND WOULD CAUSE OVERWHELMING PUBLIC CONSTERNATION IF ANY REGIME ATTEMPTED TO PUT IT INTO PRACTICE.

11. HOWEVER, THE THIRD ELEMENT IN THEIR TACTICS STEMS FROM THEIR CONCERN ABOUT THE SPRATLY ISLANDS. THESE ISLANDS ARE CLAIMED BY CHINA (BOTH PEKING AND TAIPEI) AND BY VIETNAM AS WELL AS THE PHILIPPINES. THE PHILIPPINES OCCUPIES TWO SMALL ATOLLS IN THIS ISLAND GROUP AND IS DRILLING FOR OIL AT REED BANK, WHICH IS IN THE SAME GENERAL AREA BUT SIGNIFICANTLY CLOSER TO THE PHILIPPINES.

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THE PHILIPPINES IS AWARE THAT IT WOULD NOT BE A MATCH MILITARILY FOR EITHER CHINA OR VIETNAM IF ONE OR BOTH OF THESE NATIONS SHOULD ATTEMPT TO CLEAR PHILIPPINE FORCES OUT OF THE AREA. THEREFORE, PART OF THE PURPOSE IN ATTEMPTING TO GET US TO ASSERT OUR DEFENSE OBLIGATIONS MORE CLEARLY IS TO PUT US ON RECORD AS BEING WILLING TO DEFEND PHILIPPINE CLAIMS IN THE SPRATLY GROUP.

12. WE HAVE TOLD THE PHILIPPINES REPEATEDLY THAT WE REGARD THE SPRATLYS AS DISPUTED TERRITORY AND CONSIDER THAT NO NATION HAS CLEAR TITLE TO THEM. WE HAVE SAID THAT WE WILL DO NOTHING TO PREJUDICE THE PHILIPPINE CLAIM BUT THAT WE CANNOT SUPPORT ITS VALIDITY. THE FILIPINOS CHOOSE TO EXTRAPOLATE FROM THESE STATEMENTS A DOUBT ABOUT OUR ENTIRE DEFENSE OBLIGATION TO THE PHILIPPINES AND, IN THE MUTUAL DEFENSE BOARD PAPER CITED AT THE OUTSET, HAVE ASKED A NUMBER OF SPECIFIC QUESTIONS ABOUT OUR INTENTIONS IN THE EVENT THERE IS AN ATTACK ON PHILIPPINE FORCES IN THE SPRATLYS, OR ON A PHILIPPINE VESSEL "CONDUCTING A SECURITY PATROL OF THE REED BANK AREA."

13. UNFORTUNATELY THE WORDING OF ARTICLE V OF THE MUTUAL DEFENSE TREATY IS SO BROAD THAT THE FILIPINOS, ON THE PUBLIC RECORD, APPEAR TO HAVE A GOOD CASE. ARTICLE V STATES, "FOR THE PURPOSE OF ARTICLE IV AN ARMED ATTACK ON EITHER OF THE PARTIES IS DEEMED TO INCLUDE AN ARMED ATTACK ON THE METROPOLITAN TERRITORY OF EITHER OF THE PARTIES, OR ON THE ISLAND TERRITORIES UNDER ITS JURISDICTION IN THE PACIFIC, OR ON ITS ARMED FORCES, PUBLIC VESSELS OR AIRCRAFT IN THE PACIFIC."

14. SINCE "THE PACIFIC" IS NEVER DEFINED IN THE TREATY AND SINCE THE SOUTH CHINA SEA IS PRESUMABLY PART OF THE

PACIFIC AREA, IT WOULD SEEM LIKELY THAT AN ATTACK UPON THE ARMED FORCES OR A PUBLIC VESSEL OF THE PHILIPPINES IN THE SOUTH CHINA SEA WOULD ACTIVATE ARTICLE IV WHICH REQUIRES THE PARTIES TO "ACT TO MEET THE COMMON DANGERS." ANY FAILURE OR OUR PART TO "ACT" WOULD PUBLICLY APPEAR TO BE A REPUDIATION OF OUR TREATY OBLIGATIONS AND A RENEGING UPON OUR MUTUAL DEFENSE TREATY.

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15. NEVERTHELESS STATE DEPARTMENT LAWYERS, IN RESPONSE TO A SPECIFIC INQUIRY FROM THIS EMBASSY ON THE SUBJECT, HAVE CONTRIVED A RATIONALE TO SUBSTANTIATE A FAILURE TO ACT. THEIR CABLE (STATE 116037, MAY 25, 1975) IS BEING

BHCATED CANBERRA SEPTEL. MUCH AS THIS RAIONALE MIGHT SATISFY THEIR LEGAL NICETIES IT WOULD NOT, OF COURSE, STAND UP IN THE COURT OF PUBLIC OPINION. WE WOULD CLEARLY APPEAR TO BE IN DEFAULT IF WE DO NOT RESOND IN SOME WAY TO ANY ATTACKS WHICH THE FILIPINOS MAY SUSTAIN IN THE SPRATLYS.

16. PRESIDENT MARCOS AND SECRETARY ENRILE CAN BE EXPECTED TO LEAD YOU DOWN THIS LINE OF REASONING IN THEIR DISCUSSIONS AUGUST 6. YOU CAN OBVIOUSLY AND CLEARLY ANSWER THEIR STATEMENTS ABOUT THE AUTOMATICITY OF NATO AND THE UNWILLINGNESS OF THE UNITED STATES TO DEFEND THE PHILIPPINES UNLESS OUR BASES ARE ATTACKED. YOU CAN ALSO UNEQUIVOCALLY STATE OUR POSITION CONCERNING THE DISPUTED STATUS OF THE SPRATLY ISLANDS AND REED BANK.

17. HOWEVER, WHEN IT COMES TO ANSWERING A DIRECT QUESTION ABOUT WHAT THE UNITED STATES WOULD DO IN THE EVENT OF AN RQATTACK UPON PHILIPPINE FORCES OR A PHILIPPINE VESSEL IN THE SPRATLY AREA, THE GUIDANCE PROVIDED BY THE STATE DEPARTMENT IS OBVIOUSLY INADEQUATE. THE BEST COURSE OF ACTION WOULD BE TO AVOID THE ISSUE IF POSSIBLE. IF THIS PROVES NOT POSSIBLE, THE BEST COURSE IS TO POINT OUT THAT THESE QUESTIONS HAVE BEEN SPECIFICALLY AND FORMALLY ASKED IN THE MUTUAL DEFENSE BOARD AND THAT THE PAPERS CONTAINING THE QUESTIONS HAVE BEEN FORWARDED TO WASHINGTON FOR AN OFFICIAL ANSWWER. YOU CAN INDICATE THAT YOU WILL BE PREPARED TO MAKE YOUR CONTRIBUTION TO THE FORMULATION OF THAT ANSWER BASED ON YOUR DISCUSSION WITH PRESIDENT MARCOS AND THE OTHER FILIPINOS PRESENT. IN THESE CIRCUMSTANCES PRESIDENT MARCOS WOULD CERTAINLY NOT EXPECT YOU TO OFFER AND EXTEMPORANEOUS ANSWER IN YOUR CONVERSATION WITH HIM.

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